

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission)	
On Its Own Motion)	
-vs-)	
United States Steel Corporation)	
)	Docket 10-0635
Determination under Section 5 of the Illinois)	
Gas Pipeline Safety Act of the plan USS)	
is to have in place for the inspection and)	
maintenance of its pipeline facilities in)	
and near its Granite City Works.)	

**REPLY BRIEF OF THE
STAFF OF THE ILLINOIS COMMERCE COMMISSION**

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Staff of the Illinois Commerce Commission (“Staff”), by and through its undersigned counsel, pursuant to Section 200.800 of the Illinois Commerce Commission’s (“Commission” or “ICC”) Rules of Practice (83 Ill. Admin. Code 200.800), respectfully submits its Reply Brief in the above-captioned proceeding.

I. INTRODUCTION

On November 4, 2010, the Commission entered its Order initiating this proceeding. *See, generally, Initiating Order*. This Order was entered based on an October 2010 Staff Report requesting the opening of such an investigation; the Report in question was made a part of the record and filed on November 15, 2010. *See, generally, Staff Report*. On December 3, 2010, the United States Steel Corporation (“USS”) filed a Special and Limited Appearance for the purpose of contesting jurisdiction. *See Special and Limited Appearance*. Thereafter, on January 14, 2011,

Staff and USS jointly filed, and on January 21, 2011, a duly-appointed Administrative Law Judge (“ALJ”) entered, a Case Management Order. The parties filed testimony, and on March 22, 2012, an evidentiary hearing was held, see Tr. at 4-96, and the matter continued generally. Tr. at 96.

On July 20, 2012, Staff and USS filed Initial Briefs in this matter. Staff’s Initial Brief identified and responded to many, if not most, of the arguments raised in USS’s brief. In the interest of brevity in this Reply Brief, Staff has not raised and repeated every argument and response previously addressed in Staff’s Initial Brief. Thus, the omission of a response to an argument that Staff previously addressed simply means that Staff stands on the position taken in Staff’s Initial Brief because further and additional comment is neither needed nor warranted.

II. ARGUMENT

A. The Commission has jurisdiction over the GCW Natural Gas and Coke Oven Gas Fuel Lines Because They Are Used For The “Transportation of Gas”

The operations undertaken by USS in and near the GCW through the Coke Oven Gas Pipeline, the Natural Gas Pipelines, and the South Plan Line constitute the “transportation of gas” as that term is defined in 49 CFR § 192.3 and Section 2.03 of the IGPSA, and therefore are subject to the Commission’s pipeline safety jurisdiction under the IGPSA. Staff Ex. 1.0 at 6. The “transportation of gas” includes: “gathering, transmission, or distribution of gas by pipeline . . . in or affecting interstate or foreign commerce.” 49 CFR § 192.3; see *also* 49 U.S.C. § 60101(a)(21)(A)(i); 220 ILCS 20/2.03. Furthermore, the USS pipeline facilities in and near the GCW constitute a

“pipeline facility” as that term is defined in 49 CFR § 192.3 and Section 2.04 of the Illinois Gas Pipeline Safety Act. 49 CFR §192.3; 220 ILCS 20/2.04. Pipeline facilities include “new or existing pipelines, rights of way, and any equipment, facility, or building used in the transportation of gas or in treatment of gas during the course of transportation.” 49 CFR § 192.3.

i. GCW Natural Gas Lines

USS has conceded that a pipeline used in the “transportation of gas” must by definition be a gathering line, a distribution line, or a transmission line. USS Initial Brief at 15; *citing* 49 CFR § 192.3. USS goes on in its Initial Brief to argue that the natural gas lines and the coke oven gas lines are none of these. USS Initial Brief at 15-18.

However, contrary to its own argument, USS asserted all the natural gas lines are indeed distribution lines, and provided Staff with two reports¹ prior to the initiation of this Docket, which purported as such. Staff Ex. 1.01, App. A, Att. 5, at 2. In doing so, USS has admitted all its natural gas pipelines meet the definition of a pipeline used in the “transportation of gas.” *Id.* In its Initial Brief, USS notes that a distribution line can be divided into main lines and service lines. USS Initial Brief at 16. USS then goes on to argue that the natural gas lines are not distribution lines because they contain neither a main line nor service lines. *Id.* However, this directly contradicts the opinion provided by USS’s own pipeline safety regulatory consultants, M.K. Technologies, which explicitly states that the GCW natural gas pipelines do in fact contain several mains and service

¹One report was provided by C. Lindsay Enloe of USDI and another by Larry Kotys and Paul Oleksa of M.K. Technologies. USS notes that USDI is a “OQ qualified contractor,” and that “M.K. Technologies is experienced in planning and implementing Integrity Management Programs and other pipeline safety regulations. USS has full confidence that M.K. Technologies will appropriately and swiftly guide USS to full compliance with all applicable pipeline safety codes, regulations, and requirements.” Staff Ex. 1.01, App. A, Att. 5 at 3.

lines, and as such, are distribution lines. Staff Ex. 1.01, App. A, Att. 5 at 3, 6-8; see USS Initial Brief at 17. More specifically, USS provided M.K. Technologies's analysis of the natural gas lines prior to the initiating order in this docket, a portion of which follows:

A distribution system consists of *mains* and *service lines*, and serves multiple consumers. The piping is often convoluted, traversing along many different streets. (Contrast this to a *transmission line*, which typically transports gas in a relatively straight line from one point to another, although there may be occasional lateral connections.)

The USS natural gas pipeline contains a main or mains. Typically the pipe running along a street is considered to be a *main*. From this perspective the USS natural gas piping system would contain several mains, because the system runs along several different streets. (Nevertheless, whether the USS natural gas piping system contains one main or several mains is not critical to this analysis.)

The USS natural gas piping system contains several *service lines*, each service line transporting gas from a common source of supply (a *main*) to an individual customer. All the customers are owned by USS, but each customer is responsible for the amount of gas it uses. Some of the customers are metered, whereas some of the customers are not metered.

In summary, the USS natural gas system is a *system* of pipelines, not a single pipeline. It is supplied through three separate sources. It contains mains that traverse along many separate streets. It contains several service lines. This system has the characteristics of a small distribution system.

. . .

The USS natural gas piping system meets all the definition requirements of a small distribution system. It contains mains and service lines and supplies gas to multiple customers. It has the characteristics of a typical small distribution system.

Staff Ex. 1.01, App. A, Att. 5 at 8 (emphasis in original).

Accordingly, it can be concluded that USS's own pipeline safety regulatory experts, in whom USS stated it "has full confidence . . . [would] appropriately and swiftly guide USS to full compliance with all applicable pipeline safety codes, regulations, and

requirements[,]” would have to concede that the Commission has jurisdiction over all its natural gas lines because they are all distribution lines. *Id.* at 3, 8; see 49 CFR § 192.3.

Arguing hypothetically and in the alternative, should the Commission determine that USS’s natural gas lines are not distribution lines, they should find that such lines are transmission lines within the meaning of 49 CFR §192.3. As previously noted, a “[t]ransmission line means a pipeline, other than gathering line, that (1) [t]ransports gas from a gathering line or storage facility to a distribution center, storage facility, or large volume customer that is not down-stream of a distribution center[,]” among other things. 49 CFR § 192.3. First, USS is a large volume customer of MRT, and therefore these natural gas lines are transmission lines. Staff Ex. 2.0 (R) at 9. Second, USS transports natural gas via pipeline through areas accessible to the general public, it is a pipeline operator due to the transportation of gas in its pipelines, notwithstanding the fact that it does not resell the gas obtained from its supplier. Staff Ex. 2.0(R) at 9; see *also* 220 ILCS 20/2.03; 49 CFR § 192.3. While USS may argue that GCW is a “unified steelmaking facility located on contiguous property[,]” it clearly is not. Staff Ex. 3.0 at 5; see USS Ex. 3.0 lines 29 and 30. USS does not own the city streets and rights-of-ways that contain segments of the natural gas pipelines and the coke oven gas pipeline. Because the property does not conform to the Merriam-Webster Dictionary definition of “contiguous,”² the property is not contiguous, and, therefore, the gas is allowed to pass from one location to another via the pipeline. This constitutes the transmission of gas. Staff Ex. 3.0 at 5.

Furthermore, Staff does not understand USS to contend that all of the steel and iron produced at the GCW is sold and used within the state of Illinois. Accordingly, USS

² Defined as “being in actual contact: touching along a boundary or at a point.”

participates in interstate or foreign commerce and, therefore, the gas affects interstate or foreign commerce. Staff Ex. 2.0 (R) at 9. Therefore, using either alternative, USS's natural gas pipelines transport gas in that the pipelines either distribute or transmit gas in or affecting interstate or foreign commerce. See 49 CFR § 192.3. Thus, all the jurisdictional requirements are met; USS is engaged in the transportation of gas. USS is required to submit to ICC jurisdiction.

ii. GCW Coke Oven Gas Lines

USS makes a similar argument in its Initial Brief that the Commission does not have jurisdiction over the GCW coke oven gas ("COG") lines because the COG lines do not fall within the definitions of "gathering line," "transmission line," or "distribution line." USS Initial Brief at 17. This argument similarly fails when applied to the COG lines.

Staff finds that the COG lines are indeed transmission lines within the meaning of 49 CFR §192.3. As previously noted, a "[t]ransmission line means a pipeline, other than gathering line, that (1) [t]ransports gas from a gathering line or storage facility to a distribution center, storage facility, or large volume customer that is not down-stream of a distribution center[.]" among other things. 49 CFR § 192.3.

Additionally, Pipeline and Hazardous Materials Safety Administration ("PHMSA") documents (PI-92-010 and PI-92-046), supplied to Staff by USS's expert, Mr. Oleska, support the position that a large customer tap off of a transmission line is itself a transmission line, irrespective of ownership of that gas being transported. Staff Ex. 1.01, App. A, Att. 9 at 5. USS conceded that this was the case, and stated those interpretations were applicable to the GCW coke oven gas pipeline. *Id.* This concession

is the logical equivalent to USS conceding that the GCW COG pipeline is a transmission line. *Id.*

USS transports COG via pipeline through areas accessible to the general public; it is a pipeline operator due to the transportation of gas in its pipelines, notwithstanding the fact that it does not sell the coke oven gas it generates. Staff Ex. 3.0 at 5; see *also* 220 ILCS 20/2.03; 49 CFR § 192.3. As discussed above, while USS may argue that GCW is a “unified steelmaking facility located on contiguous property[,]” it clearly is not. Staff Ex. 3.0 at 5; see USS Ex. 3.0 lines 29 and 30. To reiterate, USS does not own the city streets and rights-of-ways that contain segments of the natural gas pipelines and the coke oven gas pipeline. Because the property is not “contiguous,”³ as that term is commonly understood, the gas is allowed to pass from one location to another via the pipeline. This constitutes the transmission of gas. Staff Ex. 3.0 at 5.

Arguing hypothetically and in the alternative, the Commission has jurisdiction over the GCW COG pipelines because they are distribution lines. USS has asserted that the GCW COG pipelines are distribution lines. Staff Ex. 1.01, App. A, Att. 9 at 9-12. USS stated: “Interpretation PI-91-046 clarifies the fact that the COG line is jurisdictional even though the gas is owned by the ultimate consumer of the gas. . . . [B]y the definitions in § 192.3, the pipeline between the coke oven plant (production facility) and the various GCW users is a distribution line.” Staff Ex. 1.01, App. A, Att. 9 at 10, 12.

Again, Staff does not understand USS to contend that all of the steel and iron produced at the GCW is sold and used within the state of Illinois. Accordingly, USS participates in interstate or foreign commerce and, therefore, the gas affects interstate or foreign commerce. Staff Ex. 2.0 (R) at 9. Therefore, USS’s COG pipelines transport

³ Defined as “being in actual contact: touching along a boundary or at a point.”

gas in that the pipelines either transmit or distribute gas in or affecting interstate or foreign commerce. See 49 CFR § 192.3. Thus, all the jurisdictional requirements are met; USS is engaged in the transportation of gas. See *id.* It is required to submit to ICC jurisdiction.

**B. The PHMSA Letter Confirms the Commission’s Jurisdiction over the
GCW Natural Gas and Coke Oven Gas Lines**

Staff contacted the federal agency responsible for pipeline safety, PHMSA, to get a second opinion regarding the assertion of the Commission’s jurisdiction. In response to a Staff query regarding whether, in PHMSA’s view, pipeline safety regulations apply to certain pipelines operated by USS GCW, see Staff Ex 1.0 at 7. PHMSA is of the opinion that “[t]o the extent [gas] [pipe]lines are not on [USS] plant property they are subject to the pipeline safety laws.” See Riegel v. Medtroni, Inc., 552 U.S. 312; 129 Ct. 999; 169 L. Ed 2d 892 (2008) (agency interpretation of its own statute entitled to substantial deference). While Staff recognizes that the PHMSA letter is not a final agency action, it is clearly indicative of policy.

**i. Staff’s inquiry to PHMSA represented the facts of the case
accurately and correctly**

The PHMSA Letter is the “agency’s current application of the regulations to the specific facts presented by the person requesting the clarification.” Staff Ex. 1.1, App. B at 1. USS asserts in its Initial Brief that Staff’s written request for the Letter contained instances of incorrect factual assertions, omissions, and mischaracterizations. USS Initial Brief at 19-21; see *a/so* Staff Ex. 1.01, App. A. USS improperly asserts Staff’s request for a PHMSA analysis “describe[d] GCW pipes as being ‘in the vicinity of U.S.

Steel's Granite City Works . . . steelmaking complex which consists of a number of facilities separated by one State highway and several public streets . . .” USS Initial Brief at 20, n.21. However, this is not the case. Rather, Staff's request described GCW as follows: “[T]he questions below related to the transportation of gas by a corporation that owns and operates a large steelmaking facility (“the facility”). . . . One state highway and several public streets run through the facility, separating it into at least four separate parcels of real property.” Staff Ex. 1.01, App. A at 1. USS's incorrect characterization of Staff's request does not properly reflect the evidence in the record and as such, should not be considered by the Commission.

Next, USS asserted Staff incorrectly described GCW coke oven gas as produced in one GCW facility, transported to downstream facilities for processing, and then transported by pipeline to the point at which it will be burned in its letter to PHMSA. USS Initial Brief at 20. More specifically, USS asserts in its Initial Brief that “coke oven gas is not transported to another GCW facility for processing and burning.” *Id.* However, this assertion is directly contradictory to USS's own previous assertions:

Using [the 49 CRF Part 192] definition, the coke oven operation, up to the outlet of the compression, is a “production operation.” . . . Thus, the GCW COG pipeline transports gas from a production facility to several potential user points throughout the GCW plant.

Staff Ex. 1.01, App A, Att. 9 at 10, 11.

Thus, USS itself asserted that the “production operation” is one facility, separate from other “user points” (which can be characterized as facilities on their own) throughout the GCW plant. See *id.* While “transported to downstream facilities” is not

defined in IGPSA or NGPSA, the common understanding would indicate any facility receiving gas flow from a different facility is “a downstream facility.”

Third, USS asserts that Staff’s representation in the letter to PHMSA that describes GCW’s natural gas pipeline as a situation “in which the interstate pipeline tap, along with any metering and pressure regulation, is located inside the property line of the factory, but the system piping leaves the factory property and enters governmental property (that is a public street or highway) six times before finally entering the portion of the property on which the natural gas is consumed” was incorrect. USS Initial Brief at 21 (*quoting* Staff Ex. 1.01, App. A at 2). However, USS asserted in a response to Staff that “the GCW Natural Gas System, in which the transported gas, after entering the facility system, leaves the factory owner’s property and crosses under public rights of way several times. . . [and] [s]ome portions of the GCW natural gas pipelines are located within the right-of-way of public roadways.” Staff Ex. 1.01, App. A, Att. 9 at 8.

Finally, USS asserted that Staff’s characterization that “[t]he fourth tap is off of a separate MRT/CenterPoint transmission line and that tap location is not on USS GCW property. This fourth tap provides natural gas to a pipeline (“South Plant Line”) that supplies the “South Plant” portion of the facility (sic)”⁴ is incorrect, and that the “description incorrectly implies that GCW has a separate ‘South Plant’ and that natural gas is actively supplied to this plant through the MRT-4 delivery point.” USS Initial Brief at 21. Despite USS’s assertions of misrepresentation in Staff’s letter to PHMSA, USS itself described its facilities as follows:

⁴ The “quotation” provided by USS in its Initial Brief did not correctly reflect Staff’s letter to PHMSA, which in fact stated: “The fourth tap is off of a separate MRT/Centerpoint transmission line, is not located on the facility operator’s property, and connects to pipe (referred to by the operator as the “South Plant Line”) that carries natural gas to a facility in the “South Plant” portion of the facility.” Staff Ex. 1.01, App. A at 2.

The fourth regulator and/or valve station (MRT4), however, is located some distance away from GCW property. The piping (the South Plant Line) between the regulator and/or valve station and the GCW property is under state (ICC) jurisdiction, . . . and is classif[ied] . . . in accordance with the Part 192 regulations . . . [as a] distribution line.

Staff Ex. 1.01, App. A, Att. 9 at 3-4.

Despite USS's protestations to the contrary in its Initial Brief, USS clearly made statements that fully support all of Staff's characterizations in its letter to PHMSA. USS Initial Brief at 21; Staff Ex. 1.01, App. A, Att. 9 at 3-4; see Staff Ex. 1.01, App. A at 2; Staff Ex. 1.01, App. B at 1; Staff Ex. 1.01, App A, Att. 9 at 3-4, 8, 10, 11.

ii. USS Misinterprets and Conflates the PHMSA responses on two separate issues

Staff submitted an inquiry to PHMSA asking two distinct questions: (1) whether the pipeline safety regulations applied to the CGW natural gas and coke oven gas lines; and (2) whether these lines should be classified as distribution lines or transmission lines. Staff Ex. 1.01, App. A at 2, 4; see *also* Staff Ex. 1.01, App B at 1. PHMSA provided separate answers to the two questions. Staff Ex. 1.01, App B at 1-2. To answer the first question, PHMSA stated:

Typically, a transmission pipeline transporting gas to a destination facility such as a large volume customer is subject to the pipeline safety laws and regulations up to the point where pressure control changes from the pipeline operator to the destination facility operator, (which can be on the grounds of the facility). Beyond that point, piping operated by the facility operator entirely on the grounds of the facility is considered "in-plant piping" and would not be subject to the pipeline safety regulations although it may be subject to State building codes or other regulations. In this case, however, the natural gas pipelines operated by GCW are not located entirely on the geographically contiguous grounds of a facility. Rather, these lines depart GCW facilities and cross roads and highways accessed by the public, albeit for relatively short distances. To the extent

such lines are not on plant property they are subject to the pipeline safety laws. Historically, PHMSA has elected not to apply the Federal gas pipeline safety regulations to such lines if they are associated with the plant, meaning they are operated by plant personnel, run between plant buildings and are less than one mile in length. PHMSA, however, would not object to a State regulating the portions of such lines that are not on plant property, if the State determined there was a need. . . [.]

Staff Ex. 1.0 at 7-8; Staff Ex. 1.01, App. B at 1-2. (emphasis added).

In response to the second question, PHMSA wrote:

With respect to the question of whether such a line is a transmission line or a distribution line, PHMSA has not taken a position on that since we currently do not regulate such lines as stated above. If a State decided to begin regulating such lines, one possible approach the State could take would be to provide advance notice to operators . . . [and] provide an opportunity for comment as appropriate under State procedures, and publish a final policy.

Staff Ex. 1.01, App. B at 2. (emphasis added).

The emphasized portion of the latter citation clearly indicates that PHMSA recognized that two distinct questions were asked, and answered the questions separately. Despite the clarity with which PHMSA answered, USS argues the distinct responses to the separate issues should be read together, and that such a reading can be taken to mean the Commission should publish a policy in the event that the State of Illinois decides to begin regulating pipelines not on plant property. USS Initial Brief at 22. Here, USS mischaracterizes and conflates the two separate issues and responses discussed by PHMSA. *See id.*; *see also* Staff Ex. 1.01, App. B at 2. First, PHMSA clearly indicates the State may regulate pipelines not on plant property if the state determined there was a need. Staff Ex 1.01, App. B at 2. PHMSA never mentions providing advanced notice, comment period, or publishing a final policy in this context. *See id.* Conversely, when PHMSA is responding to the second issue, whether the GCW

lines are distribution lines or transmission lines, PHMSA provides “one possible approach the State could take” in regulating the lines not on plant property in determining whether those lines are distribution lines or transmission lines would be to provide notice, comment period, and publication of the final policy. *Id.* This is neither a requirement, nor the only method for the State to determine if pipelines not on plant property are distribution or transmission lines. *See id.* Therefore, USS’s misinterpretation and confounding of the PHMSA responses should be ignored. *See USS Initial Brief* at 21-23.

C. The Commission has jurisdiction over the GCW Natural Gas and Coke Oven Gas Lines based on Concern for Public Safety

It is undisputed that substantial portions of GCW’s natural gas and COG pipelines run across or along public rights-of-way. This is of primary importance to Staff, both from a jurisdictional and, more importantly, from a public safety perspective. As Congress made clear in enacting federal pipeline safety laws, “[t]he purpose of [the federal safety act] is to provide adequate protection against risk to life and property posed by pipeline transportation and pipeline facilities . . .” 49 U.S.C. § 60102(a).

USS attempts to minimize this indisputable fact by asserting that the rights-of-way in question are primarily used for industrial purposes. USS Ex. 1.0 at 39. This, however, is of no importance, as will be seen.

USS alleges no public safety need exists, although it acknowledges two reported coke oven gas releases. USS Initial Brief at 28; *see* Burk Sur., Staff Ex. 3.0 at 9:175-184. These leaks were caused by two holes in the GCW coke oven gas pipes. Baker Dir., USS Ex. 1.0, 38:761-39:782. Coke oven gas contains certain hazardous

substances that are not typically present in natural gas. *Id.* at 35:702-3. Release of combustible gas is a serious matter that must be evaluated and addressed appropriately. *Id.* at 36:723-24. Despite the assertion of USS to the contrary, state law requires the Commission to establish standards to meet the need for pipeline safety. 220 ILCS 20/3(c). The Commission has identified a need for pipeline safety standards with regard to the GCW lines, and may establish standards with public safety in mind. *See id.*

D. The Commission May Regulate Lines at Issue here Immediately with Its Current Rules

USS argues that the Commission should follow “PHMSA’s recommendation . . . that if Illinois decided to begin regulating such lines, the State should put newly regulated operators on notice, and provide an opportunity for public comment, and publish a final determination.” USS Initial Brief at 29. However, as discussed above, USS has misrepresented and conflated PHMSA’s responses to two separate questions. *See* Staff Ex. 1.01, App. B at 1-2.

PHMSA clearly indicates the State may regulate pipelines not on plant property if the state determined there was a need. Staff Ex 1.01, App. B at 2. USS argues that even if the Commission may regulate the GCW natural gas and COG pipelines pursuant to its authority granted by the IGPSA, that the regulations the Commission has currently adopted are “too vague to achieve this purpose.” USS Initial Brief at 29; *see* 83 Ill. Admin. Code §§ 590.10, 595.10, 595.110, 595.120; 49 CFR §§191.1, 191.3, 191.5, 191.7, 191.9, 191.11, 191.13, 191.15, 191.17, 191.23, 191.25, 192, 193,199. USS notes that a regulation is unconstitutionally vague and violates due process if it leaves the

community regulated unsure of what conduct is prohibited or fails to provide adequate guidelines to the administrative body charged with its enforcement. USS Initial Brief at 29; *Smith v. Goguen*, 415 U.S. 566, 39 L. Ed. 2d 605, 94 S. Ct. 1242 (1974).⁵ However, merely because a specific situation may require the interpretation of a statute or regulation does not, in itself, signify that the statute or regulation is unconstitutionally vague. *N. Maine Fire Protection Dist. v. Vill. of Niles*, 50 Ill. App. 3d 690,694, 365 N.E. 2d 733, 736 (1st Dist. 1977).

First, Staff notes that despite USS's assertion to the contrary, the PHMSA correspondence shows no evidence of "internal uncertainty" at how to respond to Staff's inquiry. USS Initial Brief at 29; see Staff Ex. 1.01, App. B at 2. While PHMSA did note it had not exercised its authority to regulate lines not on plant property, it clearly asserted the State's, and its own, authority to do so if a need to do so had been identified. Staff Ex. 1.01, App. B at 2. Furthermore, PHMSA merely stated it had not determined whether such lines should be considered distribution lines or transmission lines, as it has as yet chosen not to exercise its regulatory authority for these types of lines. *Id.* Although it did not specify how that determination must be made, it never expressed uncertainty in answering this question. *Id.*

Indeed, the Commission has already adopted several regulations that edify the regulated community as to what conduct is prohibited and provides adequate guidelines to the administrative body charged with its enforcement. 83 Ill. Admin. Code § 590.10,

⁵ *Smith v. Goguen* is a criminal case, and the standard for statutory and regulatory certainty for criminal issues is much more stringent than that for civil cases, as would appropriately apply in this situation. *Ellison v. Ill. Racing Bd.* 377 Ill. App. 3d 433, 446, 878 N.E. 2d 740, 752 (2007); *Karlin v. Foust*, 188 F.3d 446, 458-9 (1999) (*stating* "a statute is void for vagueness if it fails to provide "fair warning" as to what conduct will subject a person to liability . . . [and] a statute must contain an explicit and ascertainable standard to prevent those charged with enforcing the statute's provisions from engaging in arbitrary and discriminatory enforcement.") (internal citations omitted). Furthermore, regardless of the standard, the applicable statutes and regulations are not unconstitutionally vague.

595.10, 595.110, 595.120; 49 CFR §§191.1, 191.3, 191.5, 191.7, 191.9, 191.11, 191.13, 191.15, 191.17, 191.23, 191.25, 192, 193, 199. An interpretative issue is at case here; generally, the statutes and regulations provide sufficient guidance to the regulated parties and the administrative body. Indeed, USS and Staff have analyzed and applied these statutes and regulations in great detail, and have ably argued the applicability to each pipeline. Furthermore, USS noted that the consequences for the determination of proper pipeline classification at GCW is of great importance for purposes of pipeline safety regulatory requirements. Staff Ex. 1.01, App. A, Att. 5 at 6. If the statutes and regulations were truly unconstitutionally vague, USS would not be able to recognize the requirements for transmission and distribution lines, and the differing pipeline safety requirements. *See Karlin v. Foust*, 188 F.3d 446, 458-9 (7th Cir. 1999). Clearly, this is not the case, and the statutes and regulations applicable to USS are not unconstitutionally vague.

III. CONCLUSION

The Commission should determine that USS GCW is subject to ICC pipeline safety jurisdiction under the IGPSA, in that USS is engaged in the transportation of gas at the GCW, and owns and operates pipeline facilities there. The Commission should assert jurisdiction, direct USS to file a general appearance, and convene further proceedings to determine compliance.

WHEREFORE, the Staff of the Illinois Commerce Commission respectfully requests that its recommendations be adopted in their entirety consistent with the arguments set forth herein.

August 24, 2012

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